(9)

87-1468

No._____

Supreme Court, U.S.
FILED
FEB 22 1988
JOSEPH E. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

JERRY J. PHILLIPS, PETITIONER

VS.

DIANA MINER

APPENDIX TO

PETITION FOR A WRIT OF CERTIORARI

TO THE SUPREME COURT

OF THE STATE OF LOUISIANA

JERRY J. PHILLIPS
PLAINTIFF AND APPELLANT

6600 FIRST STREET
ALEXANDRIA, LOUISIANA
71303
(318) 487-8627

TABLE OF CONTENTS

	Page
TABLE OF CONTENTS.....	1
JUDGMENT FROM PINEVILLE CITY COURT.....	1
LOUISIANA THIRD CIRCUIT COURT OF APPEALS- MOTION TO DISMISS.....	4
LOUISIANA THIRD CIRCUIT COURT OF APPEALS- DENIAL OF REHEARING.....	8
OPINION OF THE LOUISIANA SUPREME COURT.....	10

CIVIL DOCKET NUMBER 85-311 (sc)

JERRY J. PHILLIPS :: :: PINEVILLE CITY COURT

VERSUS :: :: PARISH OF RAPIDES

DIANA MINER :: :: STATE OF LOUISIANA

FILED:3-24-87 :: :: SONYA STEPHENS

J U D G M E N T

ON SUIT FOR PAST DUE RENT AND BREAKING LEASE

This matter came on for hearing pursuant to regular assignment. answer and reconventional demand having been filed to plaintiff's petition. and when after considering the pleadings. evidence. offerings and testimony. the Court being of the opinion that Diana Miner has made due proof of her demands. to the extent as hereinafter set out and the law and the evidence being in favor thereof. for the reasons orally assigned. it is. therefore.

ORDERED. ADJUDGED AND DECREED that there be and judgment is hereby rendered in favor of DIANA MINER. and against JERRY J. PHILLIPS.

in the full sum of TWO HUNDRED AND NO/100(200.00) DOLLARS. together with legal interest theron from the date of judicial demand until paid. which said sum represents the return of the security deposit to Diana Miner. It is further

ORDERED. ADJUDGED AND DECREED that there be and judgment is hereby rendered in favor of DIANA MINER. and against JERRY J. PHILLIPS. in the full sum of SEVEN HUNDRED FIFTY AND NO/100 ($750.00) DOLLARS. for attorney's fees. together with legal interest theron from the date of judicial demand until paid. It is further

ORDERED. ADJUDGED AND DECREED that there be and judgment is hereby rendered and the demands of the petitioner. Jerry J. Phillips. are denied. It is further

ORDERED. ADJUDGED AND DECREED that there be and judgment is hereby rendered condemning

JERRY J. PHILLIPS to pay all costs of these proceedings.

JUDGMENT RENDERED. in open court. at Pineville. Rapides Parish, Louisiana. the 24th day of March. 1987.

JUDGMENT READ AND SIGNED. in open court. at Pineville. Rapides Parish. Louisiana. the 24th day of March. 1987.

HONORABLE F. JEAN PHARIS
JUDGE. PINEVILLE CITY COURT
PINEVILLE. LOUISIANA

NUMBER 87-903

COURT OF APPEAL. THIRD CIRCUIT

STATE OF LOUISIANA

JERRY J. PHILLIPS

Plaintiff-Appellant

VERSUS

DIANA MINER

Defendant-Appellee

Appeal form the Pineville City Court. Parish of Rapides. State of Louisiana: the Honorable F. Jean Pharis. City Judge presiding.

BEFORE: GUIDRY. DOUCET. and CULPEPPER*. JUDGES.

GUIDRY. JUDGE.

---

* Judge WILLIAM A. CULPEPPER. Retired. participated in this decision by appointment of the Louisiana Supreme Court as Judge Pro Tempore.

MOTION TO DISMISS

The defendant-appellee, Diana Miner, moves to dismiss the devolutive appeal of the plaintiff-appellant, Jerry J. Phillips, on the ground that the appeal was filed untimely.

On March 24, 1987, a judgment was rendered, read, and signed in open court, finding the appellant liable unto the appellee for the sum of nine hundred fifty and no/100 ($950.00) dollars, together with legal interest from the date of judicial demand. Notice of the signing of this judgment was mailed to the appellant on April 9, 1987, and the instant motion to dismiss followed on September 2, 1987.

As this case originates from the Pineville City Court, LSA-C.C.P. Art. 5002[1], governing appeals from city and parish courts, provides the time period within which the appellant must take an appeal.

No motion for a new trial was filed in this case, and from the record, it is unclear whether the case was taken under advisement or not, which would govern whether notice was required. The trial court's minute entry states judgment was rendered in favor of the appellee on July 15, 1986 with both counsel present in court. If this is the case, the appellant was not entitled to notice of the signing of the judgment on March 24, 1987, because there is no request for notice in the record. See LSA-C.C.P. Art. 1813 paragraph 2.

Giving the appellant the benefit of the doubt, the appellant would have had to file the motion and order for appeal within ten (10) days of service of the notice of judgment, which occurred on April 10, 1987. The filing of the motion and order of appeal on April 24, 1987 was thus untimely. For these reasons, the appellee's motion is

granted and the appeal is dismissed at his costs.

APPEAL DISMISSED.

Footnote:

[1]ART. 5002. DELAY FOR APPEAL

A. An appeal from a judgment rendered by a city court or a parish court may be taken only within ten days from the date of the judgment or from the service of notice of judgment, when such notice is necessary.

B. When an application for new trial is timely filed, however, the delay for appeal commences on the day after the motion is denied, or from service of notice of the order denying a new trial, when such notice is necessary.

COURT OF APPEAL. THIRD CIRCUIT

STATE OF LOUISIANA

October 21, 1987

Mr. Jerry J. Phillips

6600 First Street

Alexandria. LA 71303

Re: Jerry J. Phillips

versus

Diana Miner

Our Docket No. 87-903

Dear Mr. Phillips:

Your application for rehearing from the decision of this court dismissing your appeal in the captioned matter, which application is dated October 16, 1987 and was addressed to Judge Guidry, was received and has been turned over to me for attention and reply.

According to our records, notice of our decision dismissing your appeal was mailed to

you on Spetember 28, 1987. Under Rule 2-18.2. Uniform Rules - Courts of Appeal, you are allowed 14 days after the mailing of the notice of the judgment and opinion of the court within which to file an application for rehearing. Your application, mailed October 16, 1987, is therefore untimely and our Uniform Rules preclude any consideration of the same. Accordingly, our decision and judgment dismissing your appeal in this case is now final. Your only recourse at this point is to file an application with the Louisiana Supreme Court seeking supervisory review of the decision of this court.

Very truly yours,

Kenneth J. deBlanc
Clerk of Court

:gl

THE SUPREME COURT OF THE STATE OF LOUISIANA

JERRY J. PHILLIPS

VS. NO. 87-C - 2370

DIANA MINER

- - - - - -

IN RE: Phillips, Jerry J.; Applying for Writ of Certiorari and/or Review, Supervisory Review; to the Court of Appeal, Third Curcuit, Number CA87-0903; Parish of Rapides Pineville City Court Number 85-311 SC

- - - - - -

December 11, 1987

Denied.

JCW

JAD

JLD

HTL

MARCUS & COLE. JJ.. would grant to reinstate appeal.

Supreme Court of Louisiana

December 11, 1987

Franz Labranche

Clerk of Court

For the Court